

State Board of Equalization
OPERATIONS MEMO
For Public Release

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SUBJECT: Guidelines and Procedures for Court ordered Restitution Payments

I. PURPOSE

This Operations Memorandum provides procedures on how to process court ordered payments for restitution, fines, penalties, and investigative costs made to the Board of Equalization (BOE). In addition, this memorandum identifies the departments responsible for:

- Handling documents and payments associated with incoming court ordered restitution, fines, penalties, and investigative costs.
- Processing Revenue and Taxation Code (RTC) section 6829 dual determinations for corporate officers ordered by the court to pay on behalf of the corporation.
- Handling court ordered restitution cases in default.
- Monitoring restitution payments/accounts.
- Initiating legal action.

II. BACKGROUND

Restitution Orders

Restitution is defined as the act of making whole or giving the equivalent for any loss, damage, or injury. The purpose of restitution is to help victims recover from any financial hardship caused by a criminal activity.

A **restitution order** is a court order directed to the tax/fee payer requiring the payment of restitution (monetary payment), generally as a condition of probation or parole in a criminal case. The court issues a restitution order to cover the economic loss or actual crime-related expenses incurred by a victim as a result of a crime.

Restitution

Under state law, offenders convicted of a felony or misdemeanor(s) in California may be required to pay a fine, penalty, and the cost of investigation in addition to an amount for restitution. If the defendant is on a formal probation, payments are made to the county where the crime/offense occurred. The designated county bringing the court action is responsible for dividing the total funds and forwarding the BOE's portion of the fine, penalty, and cost of investigation.

The stipulated final judgment documents **may** specify how the restitution payments are allocated between taxes, fines, penalties, and cost of investigations. When the stipulated final judgment documents do not provide specific information regarding the allocation of payments, the

Investigations Division (ID) must review the criminal complaint and determine how to apply any monies received toward the restitution periods.

III. COLLECTION

Restitution payments ordered by the court on behalf of the BOE may be for less than the full amount of the civil liability (e.g., audit billing) owed by the tax/fee payer to the BOE. In this situation, the tax/fee payer remains liable for the full amount of the civil liability.

The BOE is not prevented from collecting additional amounts owed on final civil liabilities outside the restitution period. Special Operations Branch (SOB) will monitor accounts on ACMS/IRIS that have active court ordered restitution and are currently on probation; however, the control of the accounts will remain assigned to the District Office (DO), Centralized Collection Section (CCS), or Special Taxes and Fees Division (STFD) and will not transfer out of their assigned state in ACMS.

When a tax/fee payer is on probation or parole and making the required restitution payments, collection actions, other than the filing of a notice of tax lien, generally should not be taken for periods included in the restitution order. The BOE does not have authority to take collection action against tax/fee payers for liabilities that represent court ordered restitution, fines, penalties, or cost of investigations resulting from the issuance of a misdemeanor citation by the county or ID. When required payments are not made and the tax/fee payer is in default of his or her court order, staff must consult with the SOB to determine the correct judicial process that should be followed to bring the tax/fee payer into compliance with the court order.

The assigned collector will continue to work any additional liabilities and/or delinquencies and take the necessary collection action(s) on periods outside of the restitution period. However, staff **must** consult with the SOB prior to initiating collection action on these periods when the tax/fee payer is still on probation or parole.

In the case of a RTC 6071 misdemeanor citation (operating with a revoked permit) where the taxpayer does not appear for a court hearing, a bench warrant is typically issued. If a bench warrant is issued, ID should attempt to have the taxpayer arrested or brought before a Deputy District Attorney.

The collection of restitution is a continuation of a criminal court action and therefore the automatic stay provision of the bankruptcy law **does not** apply (11 USC 523(a) (7) and 11 USC 362(b) (1)).

Payments required by a restitution order may continue to be due, even after a tax/fee payer's probation has ended.

IV. RESPONSIBILITIES

A. ID Responsibilities:

1. Document the information from the court ordered restitution in ACMS for Sales and Use Tax Department (SUTD) accounts and IRIS for STFD.
2. Obtain and forward the restitution orders or information from the court to SOB for monitoring. A copy of the restitution order will be attached to a formal memo to SOB with the following information:

- ID's restitution summary form.
 - Copies of ID executive summary (when applicable) and all court documents detailing the sentencing, restitution, terms, and requirements during the probation period.
3. File a court motion to:
 - Modify restitution orders that are in default,
 - Request an extension of probation,
 - Request an increase in court ordered restitution payments, or
 - Attend court hearings as referred by SOB or DO on RTC 6071 misdemeanor cases.
 4. Prepare a memo to SUTD or STFD with the items listed in Subsection IV (A) (2) when collection of the restitution order has been paid in full or the tax/fee payer's probation or parole has ended.
 5. Provide quarterly reports to SUTD and STFD of restitution cases on probation that are being monitored by ID or SOB.
 6. Notify SUTD and STFD of possible tax leads from cigarette violations.

B. SOB (Liens and Specialized Collections Section) Responsibilities :

1. Monitor all active court ordered restitution and fines for SUTD and STFD during the period the tax/fee payer is on probation or parole. SOB will also monitor individual partners and corporate officers that were ordered to pay restitution on behalf of the partnership or corporation while the individual is on probation or parole. SOB will perform the following duties:
 - Ensure restitution payments are made timely and applied appropriately.
 - Create the unbilled cost of collection assessment on IRIS to track and monitor restitution payments.
 - Make the necessary payment adjustments for restitution payments during the probationary or parole period.
 - Ensure probation or parole terms and requirements related to the payment of restitution to the BOE are not converted or changed without proper notification.
 - Ensure probation or parole terms and conditions related to restitution owed to the BOE are satisfied during the probationary or parole period.
2. Document in ACMS/IRIS:
 - Receipt and adjustment of restitution payments.
 - Restitution was paid in full.

- Actions taken if required restitution payments are not made, or if the tax/fee payer fails to make payment.
 - Contacts made with the assigned probation or parole officer, County's Revenue Department, ID, SUTD, and STFD.
3. Prepare a memo to ID requesting the filing of a court motion to modify restitution orders, excluding RTC 6071 misdemeanor cases. The memo to file a motion for court action must include:
 - A summary of the case, including details of default if applicable.
 - Evidence of income or other assets if applicable.
 - Sentencing, restitution payment, and any other requirements ordered by the court (attach copies of court document).
 4. Refer cases to ID to file a motion to bring the tax/fee payer back to court if court ordered payments for restitution fines, penalties, or investigative costs are not received as ordered by the court during the probation or parole period, excluding RTC 6071 cases.
 5. Notify ID of any upcoming court appearances when deemed necessary.
 6. Notify the assigned probation or parole officer if the tax/fee payer fails to file returns, fails to make restitution payments as ordered, and incurs additional account receivable balances. If additional funds or assets are discovered which indicate an ability to pay an increased amount, SOB will refer the case to ID to request the Court to have the restitution payments increased based on the tax/fee payer's income or ability to pay, excluding RTC 6071 misdemeanor cases.
 7. Prepare a memo to ID to forward to the appropriate tax program, cases involving court ordered restitution, fines, penalties, or investigative costs paid in full or the tax/fee payer's probation have ended.
 8. Coordinate with SUTD or STFD to establish an account number when payment application is needed.
 9. Provide the Chiefs of Field Operations quarterly RTC 6071 reports on informal probations that are not current with court ordered payments.

C. SOB (Specialized Audit Section) Responsibilities:

1. Initiate RTC 6829 dual determinations for sales and use tax liabilities in cases where a responsible person has been ordered to pay restitution on behalf of a business that has been terminated. The request to issue a RTC 6829 dual determination will be forwarded by SOB to Audit Determination and Refund Section for processing.

2. Coordinate with the impacted program area to create arbitrary accounts for corporate officers or other persons that are ordered to pay restitution by the court when a RTC 6829 dual determination cannot be established.
3. Coordinate with the impacted program area to create arbitrary accounts for individual partners affected by the Revised Uniform Partnership Act where the court ordered the individual to pay restitution.

D. SUTD, STFD, and Headquarters' Cashier Section Responsibilities:

1. Receive the payments and supporting documentation directly from the tax/fee payer or county.
2. Forward copies of the court ordered restitution payments, and any attachments received, to SOB (Liens and Specialized Collection Section) to determine the proper payment application.

E. SUTD and STFD Responsibilities:

1. Work directly with ID staff to set restitution amounts upon completion of a prosecution. BOE's suggested policy is to require a minimum monthly payment equal to the total restitution awarded divided by the length of parole/probation in months. An exception will be made for those cases where the taxpayer has submitted documentation supporting a financial hardship, in which case, a review of the financial documents will be used to set the monthly payment amount.
2. Monitor the tax/fee payer's court ordered restitution payments after probation or parole has ended. If the tax/fee payer incurs additional liabilities or delinquencies and/or fails to make restitution payments, staff will enforce collection for any delinquent period(s) or any civil liabilities related to the restitution order.
3. Monitor/track tax/fee payer's payments of court ordered restitution **fines** for cigarette and tobacco product accounts that are no longer on probation or parole, where tax/fee payers have been cited criminally and adjudicated by the court.
4. Prepare a memo to ID to refer cases to the BOE's Legal Department (Litigation Division) when court ordered restitution and fine payments are in default from tax/fee payers convicted of misdemeanor offenses that are not on probation or parole.
5. Work, as appropriate, the tax liability on accounts that are not affected by corporate officers, partners, or other principals ordered to pay restitution.
6. Consult with SOB prior to taking collection actions for periods outside the tax/fee payer restitution order.

7. Utilize all collection tools (levies, earnings withholding orders, etc.) to collect civil tax or fee liabilities if the tax/fee payers fail to make payment after court action was taken and the probation or parole has ended.
8. Forward ACMS letter, BOE-200A, *Special Operation Action Request*, to SOB to adjust payments applied to the restitution period. However, if collection action results in a payment, the payment must be applied to the civil tax or fee liability, penalty or interest. Prepare a memo requesting ID take tax/fee payers back to court to obtain compliance with the RTC 6071 or to revoke informal probation and request formal probation.

V. RESTITUTION ORDER TO FEDERAL AGENCY

In cases where a taxpayer has been ordered to make restitution payments to a Federal Agency, a case referral should be submitted to ID with the items listed in Subsection IV (A) (2). After ID reviews the referral, they will forward it to SOB to consult with Legal staff to determine if collection action may be taken.

VI. OBSOLESCENCE

This operations memorandum will become obsolete when the information contained herein is incorporated into the appropriate manuals.

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